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ATTORNEY GENERAL OF NEW JERSEY

FILED

DEC 19 1996

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NEW JERSEY BOARD OF
CHIROPRACTIC EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW &
PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC
EXAMINERS

IN THE MATTER OF THE SUSPENSION:
OR REVOCATION OF THE LICENSE OF:

JOSEPH P. SASSO, D.C. : Administrative Action
License No. MC002704 :

AMENDED CONSENT ORDER

TO PRACTICE CHIROPRACTIC IN THE:
STATE OF NEW JERSEY :

This matter was opened before the New Jersey State Board of Chiropractic Examiners ("the Board"), upon the Board's receipt on August 7, 1996 of an application submitted on behalf of Dr. Sasso by Steven Secare, Esq. for the modification of that portion of the Board's July 7, 1995 consent order which required Dr. Sasso to have a third-party female monitor present when examining or treating female patients and also required the respondent to provide to the Board timely psychological evaluations.

The July 7, 1995 Consent Order was entered upon the receipt of complaints from two female patients regarding respondent's improper sexual conduct towards them. The consent order contained a provision in paragraph 5 that the respondent

would be permitted, after one year, to apply to the Board for the modification of the provision requiring him to have an independent, third part female observer present in the same room during examination, treatment or any other type of health care provided as specified in paragraph 3 of the consent order.

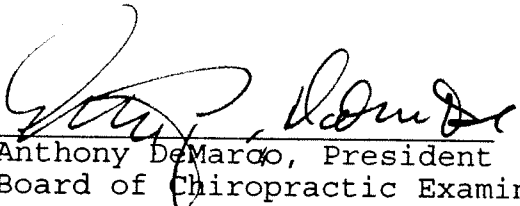
At the September 19, 1996 meeting the Board reviewed the application for an amended order, the July 19, 1996 psychological evaluation submitted by Neil J. Lavender, Ph. D. and the July 24, 1996 letter from Dr. Sasso explaining the weekly health care classes to be conducted in his office. The application for the modification was grounded upon respondent's position that he has complied with all of the terms of the Consent Order and has not had any further complaints of any nature made against him. Furthermore, via the application respondent maintains that he supplied the Board with the Affidavits mandated in the order and paid the costs of investigation and the additional costs for the third-party monitoring. Based on his full compliance with the consent order and his unblemished record to date, the respondent seeks elimination of the requirement for the third party female monitor.

The Board acknowledged that the respondent was in complete compliance with the terms of the final consent order. Furthermore, the Board reviewed and considered Dr. Lavender's psychological evaluation report that concluded that in his opinion the respondent "clearly recognizes and regrets these mistakes" and that it is his "very strong impression ...that he represents no danger to the general public" or to respondent's patients.

IT IS THEREFORE ON THIS 19 DAY OF December, 1996

ORDERED:

That the respondent has satisfactorily complied with the requirements imposed by the Board in its July 7, 1996 order and the Board amends that order and no longer requires that the respondent have a third party female observer present for all examination, treatment or any other type of health care provided by the Respondent. However, the Board strongly encourages the respondent to have a female observer present when examining or treating female patients.


Anthony DeMarco, President
Board of Chiropractic Examiners

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NEW JERSEY BOARD OF
CHIROPRACTIC EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE SUSPENSION :	Administrative Action
OR REVOCATION OF THE LICENSE OF :	
:	
:	MODIFIED
:	INTERIM CONSENT ORDER
JOSEPH P. SASSO, D.C. :	
License No. MC02704 :	
:	
TO PRACTICE CHIROPRACTIC IN THE :	
STATE OF NEW JERSEY :	
:	

THIS MATTER was opened to the New Jersey State Board of Chiropractic Examiners by way of Order to Show Cause and Complaint (Verified as to Count Three)¹ by Attorney General Deborah T. Poritz (August T. Lembo, Deputy Attorney General, appearing) for an order summarily suspending or limiting respondent's license to practice chiropractic. An Order to Show Cause was signed by Robert Tarantino, D.C., Board President, on January 12, 1995 by which a hearing was scheduled for January 26, 1995 before the Board.

The complaint alleged that respondent engaged in gross and repeated malpractice, as well as professional misconduct, with regard to his care of two female chiropractic patients. In addition, the Complaint alleged that respondent violated the terms of the October 29, 1993 Interim Consent Order entered by the Board. In support of this present Order to Show, the Attorney General relied upon the

¹ Count Three is the only Count upon which the Attorney General moved on the Order to Show Cause heard by the Board on January 26, 1995.

Certifications of Deputy Attorney General August T. Lembo, Mary Ann DeNise and Frances Melodick, together with the investigative reports of Investigators Ilona Magyar, R.N. and Lois M. Greenwood. To date, no answer has been filed on behalf of respondent to the Attorney General's complaint.

Since October 29, 1993, respondent's license to practice chiropractic had been restricted pursuant to the terms of the Interim Consent Order, which was entered in lieu of an Attorney General's application for a temporary suspension. Specifically, respondent was expressly prohibited from rendering any chiropractic or other health care to any female patient until a third party female observer was present in the room when such care was being rendered. By the terms of that order, no distinction was drawn between former and new patients. In addition, it was agreed that the third party female observer was to be a person chosen by both the Board and respondent, which choice was subject to the sole approval of the Board. Furthermore, the parties consented to the condition that once the observer was approved, she was to meet with the Board or a committee of the Board at which time she would be apprised of the reasons for her presence in the treating room and she would be advised of the requirement that written reports relating to respondent's practice were to be submitted to the Board per the Board's instructions.

On January 26, 1995, the Board conducted a hearing on the Attorney General's application, seeking a summary suspension grounded upon respondent's violation of the Interim Consent Order, with Robert Tarantino, D.C., presiding. The State was represented by Deputy Attorney General August T. Lembo. Respondent appeared and was

represented by Steven Secare, Esq. Preliminarily, a sequestration order was sought by respondent as well as the Attorney General, which motions were granted by the Board, without objection from the parties.

At the hearing, the deputy argued that respondent violated the terms of the Interim Consent Order by examining female patients without having any female observer present in the room while he rendered chiropractic or other health care to such female patients. The pertinent provision of the Interim Consent Order specifically stated that:

Respondent shall not render any chiropractic or health care to any female patient unless there is present within the same room where the chiropractic or other health care is being rendered a third party female observer who shall be present at all times during diagnostic examination, treatment or any other type of health care provided by Respondent. The third party female observer shall be a person chosen by the Board and Respondent, but shall be subject to the approval of the Board. She shall meet with the Board or a member or members designated by the Board and shall be advised of the reason why her presence is required. She shall report in writing and under oath to the Board as to her observations of Dr. Sasso's practice at intervals to be determined by the Board. [Emphasis added].

The Board received into evidence stipulations numbered one through four in which respondent admitted that he treated and/or examined female patients, J.M., M.D., and F.M., respectively, on more than one occasion in a room in which there were no other persons present at the time the care was rendered by him.

Respondent would not agree to stipulate to number five which alleged that respondent had on one or more occasions examined or

treated a female patient in an unchaperoned room while the door was closed.

The deputy presented the testimony of Investigators Ilona Magyar and Lois Greenwood seeking to prove that while they were in respondent's office he treated a female patient without a third party female observer in a room and with the door closed. The testimony offered by Investigator Magyar indicated that she heard both male and female voices coming from an adjoining treatment room in which the door was closed but she could not specifically identify the voices she heard. Thus, it was not established whether in fact it was the respondent unchaperoned and treating a female patient in the adjoining treatment room in which the door was closed.

Investigator Lois Greenwood testified that she could not see respondent enter any treatment room with a female patient and close the door behind him because she never left respondent's waiting room to enter the treatment area of the office. Consequently, the testimony of Investigator Greenwood did not establish the theory proffered by the Attorney General that respondent treated or cared for female patients without a third party female observer in a room and with the door closed.

In addition, the Attorney General asked the Board to take Administrative Notice of the fact that no person had ever been approved by the Board to act as a third party female observer so as to permit respondent to treat or care for any female patient.

The Board then heard the testimony of respondent Joseph R. Sasso, D.C. Dr. Sasso acknowledged that he signed the Interim Consent Order but stated that he read it only once. Dr. Sasso confirmed that

he had complied with the provisions of the Interim Consent Order by submitting to a psychiatric evaluation by the psychologist approved by the Board, Philip Witt, Ph.D. Dr. Sasso testified that he was never advised by the Board or his attorney that any third party observer had been approved. Nevertheless, Dr. Sasso admitted that at least from February 1994 until January 1995 he continued to treat female patients without a third party female observer in the treating room. However, he qualified this by identifying those patients as female patients whom he had previously treated prior to entry of the October 29, 1993 Interim Consent Order, and he further testified that the treatment was never rendered behind closed doors. When pressed on cross-examination as to whether he ever treated new female patients, who had first come to the office after October 29, 1993, Dr. Sasso answered by attempting to draw a distinction between examining and treating female patients. Dr. Sasso admitted that he might have seen a female patient who was not a patient of record prior to October 29, 1993 but stressed that it would not have been to conduct a complete initial examination. Rather, he might have seen such a female patient to render a treatment. In addition, Dr. Sasso testified that as a result of the Order he has substantially changed the character of his practice by seeing the bulk of his patients, whom he identified as primarily senior citizens, on Monday, Wednesday and Friday between the hours of 10 a.m. and 1 p.m. when his wife, who is also a chiropractor, is mostly present in the office. Dr. Sasso also pointed out that he has hired a receptionist who is always present in the office when he is treating patients.

In mitigation of any penalty, Dr. Sasso stated that he believed he was in compliance with the "intent" of the Order by

limiting his practice almost exclusively to senior citizens, by not performing initial examinations on new female patients during the past three years, and by always leaving the door open except for the limited purpose of taking an x-ray of a patient. Finally, Dr. Sasso testified that this matter has taken a toll on his marriage and has financially, emotionally and physically affected him and his family.

Based on the record before it, the Board concludes by a preponderance of the credible evidence that, although the Interim Consent Order required Dr. Sasso to obtain a Board approved third party female observer prior to treating and/or examining any female patient during the period October 29, 1993 through to the present time, respondent never obtained such a person to enable him to treat female patients. In fact, the record clearly establishes through respondent's own admissions by way of stipulation that he did in fact render chiropractic and/or health care to three female patients. The record further establishes by respondent's own candid acknowledgment on the record that he did in fact treat former female patients without a chaperone notwithstanding the fact that the activity was not exempt pursuant to the Interim Consent Order. Furthermore, the Board finds the testimony submitted in mitigation to be unpersuasive in light of the fact that the Interim Consent Order provided Dr. Sasso with a mechanism by which he could have continued to treat both female and male patients in compliance with the terms of the Order. Therefore, in considering the totality of the evidence before us, the Board finds that these acts clearly violate the terms of the Interim Consent Order by which the respondent agreed not to see any female patients without a board approved female chaperone. That order was entered in lieu of

an application for temporary suspension and required the Board to repose its trust in respondent's compliance. The additional safeguards in this order are deemed necessary in light of respondent's violations of that trust.

WHEREFORE, IT IS on this day of February, 1995,

ORDERED that:

1. Commencing January 26, 1995, respondent shall not examine and/or treat any female patients - both new and former female patients - unless and until a third party female observer is present in the examining room during diagnostic examination, treatment or any other type of health care provided by respondent. The third party observer shall be a person submitted by the respondent but shall be subject to the approval of the Board and respondent is expressly prohibited from examining and/or treating any female patients until such third party female observer is approved and present in the examining room. She shall meet with the Board or a member or members designated by the Board and shall be advised of the reason why her presence is required. She shall report in writing and under oath to the Board every two weeks from the date of approval by the Board as to her observations of respondent's practice.

2. Upon entry of the within order, respondent, upon demand made, shall grant the Board, or any investigator sent by the Board, full access to respondent's office premises, as well as full access to all patient records, on unannounced random inspections.

3. Upon receipt of information that respondent has failed to fully comply with any of the terms of this order, the Attorney General may immediately move for the entry of an order to suspend

respondent's license to practice chiropractic subject to a right in respondent to move for modification or dissolution of any such order on two (2) days' notice to the Board and to the Attorney General.

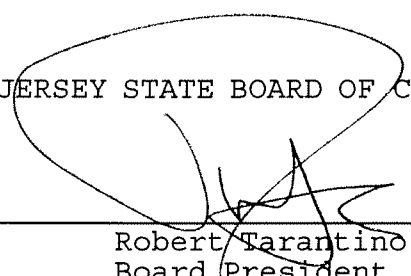
4. Until such time as respondent obtains a third party female observer approved by the Board, respondent shall submit weekly affidavits stating that respondent is not seeing and/or treating any female patients for the purpose of rendering chiropractic and/or any other health care.

5. Respondent shall file an Answer to the Complaint with the Board and serve a copy upon plaintiff's counsel on or before February 6, 1995.

6. This matter shall be transmitted to the Office of Administrative Law forthwith for the purpose of conducting the plenary hearing.

NEW JERSEY STATE BOARD OF CHIROPRACTIC EXAMINERS

By: _____


Robert Tarantino, D.C.
Board President